

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1948 OF 2017

Rohidas S/o Babasaheb Waghmare,
Age: 26 years, Occu: service,
R/o Village Shahapur, Tq. Ambad
District: Jalna
At present R/o village Gadewadi
Tq. Shevgaon, District: Ahmednagar

Petitioner

Versus

- 1 The State of Maharashtra,
Through its Secretary,
School Education & Sports Department,
Mantralaya, Mumbai
- 2 The Deputy Director of Education,
Pune region, Pune
- 3 The Education Officer (Secondary)
Zilla Parishad, Ahmednagar
District: Ahmednagar
- 4 Rajashri Shri Chhatrapati Shahu Shikshan
Prasarak Mandal, Burudgaon Road,
Ahmednagar, District : Ahmednagar
Registered Trust: Through its Secretary
- 5 The New English School, Gadewadi,
Tq. Shevgaon, Dist. Ahmednagar
Through Its Head Master

Respondents

Mr.V.H. Dighe advocate for the petitioner
Mr. S.B. Joshi Assistant Government Pleader for Respondent Nos.1 to 3
Mr. K.M. Gawade Patil advocate for respondent Nos.4 and 5

CORAM : R. M. BORDE & VIBHA KANKANWADI, JJ

(Date: September 22nd 2017)

ORAL JUDGMENT

(Per: R.M. Borde, J)

1 Heard.

2 Rule. With the consent of the parties, petition is taken up for final decision at admission stage.

3 The petitioner is seeking quashment of the order passed by the Education Officer - Secondary on 24.12.2014, refusing to grant approval to the appointment of the petitioner as a clerk.

4 The petitioner belongs to scheduled caste (SC) category and has been appointed as against reserve seat, prescribed for the aforesaid reserve category, in observance of the procedure prescribed under law. The petitioner contends that, the management, before proceeding to fill up the vacancy, tendered an application to the Education Officer, Zilha parishad, seeking permission to issue an advertisement. It is contended that, no

response was received by the management to the communication dated 16.5.2012, seeking permission to issue an advertisement. As such, the management proceeded to issue advertisement for the purpose of making appointment to the post of Junior clerk from amongst SC category. It is calendered that, the petitioner has been appointed by observing the due procedure by the management in the year 2012. A proposal was tendered seeking approval to the appointment, which was not considered at the relevant time. The proposal tendered by the management in the year 2014, seeking approval to the appointment of the petitioner has been turned down by the Education Officer – Secondary, for the reason that the appointment of the petitioner is during ban period prescribed under the Government Resolution dated 2.5.2012, as well as the institution has not secured permission before proceeding to fill up the post. It is contended that there were surplus employees and that the Education Department could have directed the management to absorb them while filling up the vacancies. The petitioner contends that his appointment has been made during the drive undertaken to fill-up the backlog vacancies. It is contended that the Government Resolution dated 5.2.2012 does not apply in case of backlog vacancies.

5 The petitioner placed reliance on a Judgment delivered by the Division Bench of this Court in **Writ Petition No.10580/2015** in the matter of **Sau Revati Kusha Wagh & another versus The State of Maharashtra along with the companion Writ Petitions** on 9.3.2017. The Division Bench dealing with the matter has placed reliance on the earlier Judgment of this Court in the matter of **A.N. Dhale versus State of Maharashtra and others (2016 (5) MhLJ 742)** and arrived at a conclusion that the Government Resolution dated 2.5.2012 issued by the School Education Department does not apply in respect of backlog vacancies. It is recorded in the Judgment that before issuance of the Government Resolution dated 2.5.2012, the State Government has issued a resolution on 13.4.2011 allowing the institutions to fill up the posts reserved for backward class categories, by adopting a special drive and the ban imposed by the Government Resolution dated 2.5.2012 as such, would not apply to such cases.

6 In the instant matter, the petitioner belongs to SC category and has been appointed in observance of the procedure, prescribed under law. The counsel appearing for the petitioner contends that in view of Rule 9(7) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulations 1981, it is

obligation of the management to fill up the backlog vacancies by observing prescribed procedure . The said obligation cast upon the management has been performed, which cannot be questioned by the Zilha Parishad Authorities.

7 In view of above, the reason put forth by the Education Officer while turning down the proposal tendered by the institution, seeking approval to the appointment of the petitioner does not hold good. The Writ petition, therefore, deserves to be allowed and the same is accordingly allowed.

8 The order passed by the Education Officer, impugned in this petition, refusing to accord approval to the appointment of the petitioner dated 24.2.2014 is quashed and set aside and the respondent No.3 Education Officer – Secondary, Ahmednagar is directed to accord approval to the appointment of the petitioner in accordance with the provisions of Rules within eight weeks from today.

9 Rule is accordingly made absolute.

10 There shall be no order as to costs.

(VIBHA KANKANWADI, J.)

(R. M. BORDE, J)